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9/26/08*

AMENDMENT NO. 2
THE SUPERFUND STATE CONTRACT
BETWEEN
THE STATE OF NEW JERSEY
AND THE
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
FOR REMEDIAL ACTIVITIES RELATED TO THE
ROCKAWAY BOROUGH WELLFIELD SUPERFUND SITE
IN THE STATE OF NEW JERSEY

ROCKAWAY BOROUGH WELLFIELD SUPERFUND SITE

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A. Authority

This Amendment No. 2 to the Superfund State Contract (the "Contract") is entered into pursuant to Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 ("CERCLA"), as amended, 42 U.S.C. §9601 et seq.

B. Purpose

This Contract is an agreement between the United States Environmental Protection Agency ("EPA") and the State of New Jersey (the "State") to conduct remedial activities at the Rockaway Borough Wellfield Superfund site (the "Site") located in Rockaway Borough, Morris County, New Jersey.

Attached and incorporated herein as Appendix A is a description of the Site. This Contract covers Tasks I and II of the activities described in the Statement of Work (the "SOW") attached hereto and incorporated herein as Appendix B.

C. Parties' Representatives

1. EPA has designated Carole Petersen, Chief, New Jersey Remediation Branch, United States Environmental Protection Agency, Region II, 290 Broadway, New York, New York 10007-1866, (212) 637-4420 to serve as EPA Project Officer for this Contract.
2. The State has designated Edward Putnam, Assistant Director, Site Remediation Program, New Jersey Department of Environmental Protection, 401 East State Street, P.O. Box 028, Trenton, New Jersey 08625, (609) 984-3074, to serve as the State Project Officer for this Contract.

D. Procurement

The EPA shall employ contractors and the Corps of Engineers (COE) to do the work described in Tasks I and II of the SOW and shall make all payments to the contractors and the COE for that work.

E. Financial Responsibilities of the Parties and Payments

1. EPA shall contribute 90 percent of the costs of Tasks I and II, provided, however, that it shall not be required to contribute more than \$7,200,000 for Task I; and \$1,350,000 for Task II unless this Contract is amended in writing to provide for a higher limit on expenditures for the work covered by that Task. The State shall contribute 10 percent of the cost of Tasks I and II, provided, however, that it shall not be required to contribute more than \$800,000 for Task I; and \$150,000 for Task II unless this Contract is amended to provide for a higher limit on expenditures for the work covered by that Task. Expenditures by EPA of the funds contributed by the State shall not ensure actions at the Site beyond those specified in this Contract.
2. EPA and the State each shall, in addition to its contributions to the costs of the work described in the SOW as specified above, be responsible for furnishing the personnel, materials, services and facilities necessary for or incidental to the performance of its

other obligations under the Contract, except as covered by a separate support agency (management assistance) cooperative agreement.

3. Payment Schedule. The State shall make its payments for construction costs under this agreement according to the following terms and conditions:
 - a. The State shall make its payments for construction costs in accordance with the Payment Schedule Table (Attachment 1 to Appendix B), which identifies the payment events and the amounts due for each Task. The State shall pay EPA the amount associated with a completed Payment Event within sixty (60) days of EPA's submission of an invoice to the State.
 - b. Payments outstanding on the attached Payment Schedule Table (Attachment 1 to Appendix B) that are due on the same date may be combined.

c. After the final total cost is determined and supporting documentation is provided to the State as provided in Paragraph E.4, final payment by or reimbursement to the State will be made as follows:

- i. If the State statutory share of the final total cost is greater than the amount provided to EPA under subparagraph E.3.a. the State shall pay EPA the balance of its statutory share within sixty (60) days of the submission of an invoice to the State by EPA.
- ii. If the State statutory share of the final total cost is less than the amount provided to EPA under subparagraph E.3.a. EPA agrees to reimburse any such overpayment to the State within sixty (60) days after State submission of an invoice for reimbursement for these excess funds, subject to the availability of federal funds.

4. Within sixty (60) days of the date EPA makes the final payments to the contractors and the COE for the work described in Tasks I and II of the SOW, EPA shall calculate a final total cost for that work. The final total cost will be the sum of all payments to the contractors and the COE for that work. EPA shall give the State Project Officer notice of the final total cost promptly after calculating the cost, and simultaneously shall give the Project Officer copies of the invoices or other documentation supporting said cost.
5. The instruments of payment by the State shall be made payable to "USEPA - Hazardous Substances Superfund" and shall be sent to:

U.S. Environmental Protection Agency

Superfund Payments

Cincinnati Finance Center

P.O. Box 979076

St. Louis, Missouri 63197-9000

The State shall enclose identification with the instrument of payment stating the site for which payment is being made and whether payment is for a state statutory share.

6. All EPA refunds to the State shall be made payable to "Treasurer, State of New Jersey" and shall be sent to:

New Jersey Department Environmental Protection

Budget and Finance

P.O. Box 420

Trenton, New Jersey 08625-0420

Attention: Director

7. If the parties amend this Contract to include any additional work as part of Tasks I and II beyond that already specified in Tasks I and II of the SOW, the final total cost of the work shall be calculated and applied in the same manner as specified for that Task.

F. Duration

This Contract shall become effective upon execution by both parties and shall remain in effect until December 31, 2011, or until completion of the activities described in the SOW whichever occurs later. Pursuant to Paragraph N, the parties may agree to extend, by amendment, the duration of the Contract for the period necessary to implement any response activities that the parties agree to undertake beyond those defined in the SOW.

G. Off-site Storage, Destruction, Treatment or Disposition

1. Should EPA determine that off-site storage, destruction, treatment, or disposition (collectively, "Off-site Disposition") of hazardous substances is required for implementation of Tasks I and II of the SOW, it shall attempt to arrange for such Off-site Disposition, provided, however, that ultimate responsibility to arrange for Off-site Disposition rests with the State. In the event that EPA is unable to arrange for such Off-site Disposition, the State shall, at EPA's request, make available a hazardous

waste disposal facility which has adequate capacity and which meets the requirements of 42 U.S.C. §9621(d)(3).

The State agrees to furnish all legal and technical assistance necessary to accomplish such Off-site Disposition. Failure of the Parties to arrange for such Off-site Disposition shall be cause for termination of this Contract.

2. EPA's 1995 National Assessment of hazardous waste treatment and disposal capacity shows that there is adequate national capacity through the year 2013. This assessment included data provided by the State. Based upon the assessment and other data, as appropriate, EPA believes that there will be adequate national hazardous waste treatment and disposal capacity during the 20-year period following signature of this Superfund State Contract for the Rockaway Borough Wellfield Superfund Site. The State hereby assures the availability of hazardous waste treatment or disposal facilities for the next 20 years following signature of this Superfund State Contract, pursuant to CERCLA Section 104(c)(9), 42 U.S.C. Section 9604 (c)(9).

H. Maintenance

The parties do not anticipate the need for any Maintenance (for the purpose of this Contract, the term "Maintenance" shall mean operating, repairing, servicing, environmental monitoring or any other activity necessary to insure normal performance and continuation in a good and serviceable condition) with regard to Tasks I and II. Pursuant to 42 U.S.C. §9604(c)(3), as amended, if any Maintenance is necessary, the State shall assure all future Maintenance during the expected life of Tasks I and II, which will be determined by amendment.

I. Permits

In accordance with 42 U.S.C. §9621(e) and 40 CFR 300, Federal, State, and local permits are not required for on-site Fund-financed remedial actions. Subject to the provisions of 42 U.S.C. section 9621, EPA shall, however, attain or exceed applicable or relevant and appropriate Federal, State or local public health or environmental requirements that have been identified for this Site consistent with the Record of Decision. Remedial actions which involve the storage, treatment or disposal of hazardous substances at off-site facilities shall involve

only off-site facilities that are operating under appropriate Federal and State permits or authorization and other legal requirements.

J. Site Access

1. EPA shall attempt to secure access to the Site for itself, its agents and representatives, and for contractors performing the work described in the SOW. The State, however, shall assist EPA as requested, and shall retain to the extent of its legal authority the responsibility for obtaining site access if EPA efforts are not successful.
2. With reasonable advance notice to the EPA Project Officer, and upon condition that they comply with any site safety plan then in effect, employees and other representatives of the State shall have access to the Site.

K. Acquisition of Interests in Real Property

To the extent that any interests in real property are necessary for performance of this Contract and if such interests have not been acquired by the State, EPA shall use its best efforts to acquire such interests. The State agrees to accept transfer of such interests following completion of the remedial action, in accordance with CERCLA. The cost of acquiring such interest in real property shall be paid for as provided in paragraph E.1.

Further, the State agrees to furnish all legal and technical assistance necessary to accomplish such acquisition by EPA.

Nothing in this Contract shall impair or otherwise affect the right of the United States or the State to file any lien(s) on the real property which is the subject of this Contract pursuant to the provisions of SARA or pursuant to any other statutory or equitable grounds.

L. Information Regarding the Site

1. At EPA's request, and to the extent allowed by State law, the State shall make available to EPA any information in its possession concerning the Site, with the

exception of deliberative and policy documents which the State would not otherwise be required to disclose, including those documents subject to the attorney - client privilege. At the State's request, and to the extent allowed by Federal law, EPA shall make available to the State any information in its possession concerning the Site, with the exception of deliberative and policy documents which the EPA would not otherwise be required to disclose, including those documents subject to the attorney - client privilege.

2. If any information is provided to EPA by the State under a claim of confidentiality, it will be treated in accordance with 40 CFR Part 2 if the State has given EPA notice of the claim of confidentiality. EPA will not disclose information submitted under a claim of confidentiality unless EPA is required to do so by Federal law and has given the State ten (10) working days advance notice of EPA's intent to release that information. Absent notice of such claim, EPA may make said information available to the public without further notice.

3. If any information is provided to the State by EPA under a claim of confidentiality, it shall be treated in accordance with State law if EPA has given the State notice of the claim of confidentiality. The State shall not disclose information submitted under a claim of confidentiality unless the State is required to do so by State law and has given EPA ten (10) working days advance notice of the State's intent to release that information. Absent notice of such claim, the State may make said information available to the public without further notice.

M. Failure to Comply with Terms of Contract

1. If the State fails to comply with the terms of this Contract, EPA may proceed under the provisions of 42 U.S.C. §9604.
2. If EPA fails to comply with the terms of this Contract, no action for damages or any other form of remedy shall be commenced until the State has given EPA sixty (60) days written notice of intent to file suit.

N. Amendments

Any change in this Contract must be agreed to by both parties in writing.

O. Community Relations Plan

EPA has developed and implemented a Community Relations Plan.

P. Third Parties

1. This Contract is intended to benefit only the State and EPA. It extends no benefit or right to any third party.
2. Neither EPA nor the State assumes any liability to third persons with respect to losses due to bodily injury or property damages resulting in any way from work performed in connection with this Contract, nor does either party waive any rights or immunities provided by law.

3. The execution of this Contract does not constitute a waiver of EPA's right to bring an action against any person or persons for appropriate relief under any provision of CERCLA or any other provision of law.
4. The execution of this Contract does not constitute a waiver of the State's right to bring an action against any person or persons for appropriate relief under any applicable State or Federal law.

Q. Enforcement and Cost Recovery

1. **Disclaimer of Agency Relationship**

Nothing contained in this Contract shall be construed to create, either expressly or by implication, the relationship of agency between EPA and the State. Any standards, procedures or protocols prescribed in this Contract to be followed by EPA or its contractors during the performance of its obligations under this Contract are for assurance of the quality of the final product of the actions contemplated by this Contract and do not constitute a right to control the actions of the EPA. EPA (including its employees and contractors)

is not authorized to represent or act on behalf of the State in any matter relating to the subject matter of this Contract and the State (including its employees and contractors) is not authorized to represent or act on behalf of the EPA in any matter relating to the subject matter of this Contract.

2. Notice of Intent to Settle or to Initiate Proceedings

EPA and the State agree that, with respect to the claims which each may be entitled to assert against any third person (herein referred to as the "responsible party," whether one or more) for response activities at the Site described in this Contract, neither EPA nor the State will commence settlement negotiations with a responsible party except after having given prior written notice to the other party to this Contract in advance of the commencement of settlement negotiations, nor will EPA or the State enter into a settlement with, or initiate a judicial or administrative proceeding against, a responsible party except after having given notice in writing to the other party to this Contract not less than thirty (30) days in advance of the date

of the proposed settlement or commencement of the proposed judicial or administrative proceedings.

Neither party to this Contract shall attempt to negotiate on behalf of the other party, and authority to do so is hereby expressly negated and denied.

3. Cooperation and Coordination in Enforcement and Cost Recovery Efforts

EPA and the State agree that they will cooperate and coordinate efforts to recover their respective costs for response actions taken at the Site described herein, including settlement negotiations and the filing and management of any judicial actions against potentially responsible parties. This shall include coordination in the use of evidence and witnesses and in the preparation and presentation of any enforcement or cost recovery action. Any documents or information which may be confidential under the provisions of any applicable State or Federal law or regulation may be withheld notwithstanding the terms of this paragraph.

4. Judicial Action

EPA and the State agree that any judicial action taken pursuant to CERCLA by either party against a potentially responsible party for recovery of any sums expended in response actions at the Site described herein shall be filed in the United States District Court for the judicial district in which the Site is located, or in such other judicial district of the United States as may be authorized by 42 U.S.C. §9613 and agreed to in writing by the parties to this Contract.

5. Assumption of Work by Responsible Party

- a. If any responsible party notifies EPA in a timely manner of its willingness to perform the activities delineated in the Statement of Work and Scope of Work attached hereto, and any amendments thereto, EPA shall immediately notify the State of such offer and, after consultation with the State, will determine whether to offer the responsible party the opportunity to undertake the work. If EPA decides to make such an offer, it shall notify the State in writing of that fact. EPA then will

provide the responsible party with a detailed work plan identifying the work to be performed. The responsible party shall have two (2) weeks in which to review the detailed work plan and to indicate its desire to undertake the activities described therein. If EPA, after consultation with the State, determines that the responsible party is capable of properly and promptly performing the work, it may enter into an agreement with the responsible party for the work.

- b. If EPA determines that the responsible party is unable or unwilling to perform any of the activities of the Scope of Work and/or Statement of Work in a manner acceptable to EPA, EPA will promptly so notify the State in writing.
- c. Each party recognizes that any agreement it executes with a responsible party pursuant to this paragraph shall not be construed to waive or limit such rights as the other party may have to enter into a different settlement with, initiate a judicial or administrative proceeding against, or

assert any claims against said responsible party consistent with such laws, regulations and policies as may apply to the performance of remedial measures at the Site.

- d. If EPA enters into a settlement with a responsible party to undertake the work covered by Tasks I and II of the SOW after the State has paid its statutory cost share, as defined in paragraph E.1., EPA will reimburse the State for such costs within sixty (60) days after State submission of an invoice for reimbursement for these funds, subject to the availability of federal funds.

6. Evidence Documentation

EPA shall implement the standard agency protocol for the documentation of evidence at the Site.

APPENDIX A

SITE DESCRIPTION

ROCKAWAY BOROUGH WELLFIELD SUPERFUND SITE MORRIS COUNTY, NEW JERSEY

The Rockaway Borough Wellfield Superfund Site is located in Morris County, New Jersey. The Borough's three water supply wells serve approximately 10,000 people and draw water from an unconsolidated glacial aquifer. The site is located in a residential and commercially populated area. In 1981, a granular activated carbon treatment system was installed after contamination was discovered in the municipal water supply system. The primary contaminants identified were trichloroethylene (TCE) and tetrachloroethylene (PCE).

In 1985, the New Jersey Department of Environmental Protection (NJDEP) conducted a Phase I Remedial Investigation/Feasibility Study (RI/FS). The Phase I report concluded that contamination of the municipal water supply was emanating from multiple source areas in the Borough. In 1986, The EPA issued a Record of Decision (ROD) which called for the continued operation and maintenance of the existing Rockaway Borough water treatment system and further study to identify sources and to delineate the full extent of contamination.

Based on the 1986 ROD, EPA initiated a Phase II RI/FS to identify the contaminant sources, further delineate the full extent of the contamination and evaluate remedial action alternatives to address the sources of contamination. Some of the findings were that: groundwater in the northeast portion of Rockaway Borough was contaminated with volatile organic compounds (VOCs), primarily TCE and PCE, there was a PCE groundwater plume originating in the area of the East Main Street and Wall Street (EM/WS) area; a TCE groundwater plume was emanating from the Klockner and Klockner (K&K) property, and groundwater contamination from VOCs was emanating from the Roned Realty Industrial Area. Four remedial alternatives were evaluated: No further action, separate remediation of three plumes, combined remediation of the K&K and EM/WS plumes and no further action at Roned Realty Industrial Area, and combined remediation of the K&K and EM/WS plumes and separate remediation of the Roned Realty Industrial Area plume.

In 1991, EPA issued a second ROD that augmented the 1986 ROD by selecting a remedy for the VOC plumes in the groundwater that

migrated to the Borough Well Field. The selected remedy was the remediation of the K&K and EM/WS plumes, and no further action at the Roned Realty Industrial Area. The selected remedy involved groundwater extraction, with treatment by air stripping, chemical precipitation and discharge.

In 1994, EPA and Thiokol (now Alliant Techsystems, Inc.), a potentially responsible party for a portion of the site, entered into a Consent Decree (CD) whereby Thiokol agreed to, among other things, prepare the Remedial Design (RD) for the entire Rockaway Borough Wellfield Site, and perform the remedial Action for the K&K portion of the site. Thiokol had no responsibility for the contamination at the EM/WS portion of the site, but agreed to design the remedy for both groundwater plumes to ensure that the remedial systems would be compatible in the overall groundwater regime. Alliant Techsystems, Inc. completed construction of the K&K groundwater treatment system in December 2005 and has been operating the system since January 2006.

EPA will implement the Remedial Action for the PCE plume emanating from the EM/WS area. Upon completion of the construction of the groundwater treatment system, and a determination that it is operational and functional, EPA will then initiate the Long Term Response Action.

An RI/FS to characterize the EM/WS portion of the Rockaway Borough Well Field site was completed in 2006 and a ROD was signed for the source area in September 2006. The ROD calls for the excavation of approximately 40 cubic feet of contaminated soil with off-site disposal and/or treatment, and soil vapor extraction to augment the soil excavation. Design of the EM/WS portion of the site is currently underway and is expected to be completed this fall.

An RI/FS for the Klockner and Klockner Property was completed in 2007 and a ROD was signed for the source area in September 2007. The ROD calls for soil vapor extraction of VOCs beneath Building 12, excavation and off-site disposal and/or treatment of approximately 150 cubic yards of VOC-contaminated soil near Building 13, and excavation of approximately 27 cubic yards of lead-contaminated soil near Building 12. Design of the remedial action will occur following negotiation with the PRPs which began in July 2008.

APPENDIX B

STATEMENT OF WORK

ROCKAWAY BOROUGH WELLFIELD SUPERFUND SITE

To complete the remaining remedial action activities for the sites, the following task will be required:

- I. Construction and implementation of the remedial action which will consist of a groundwater extraction and treatment system with discharge to storm sewer. Implementation will include an approximately one-year start-up period of operation.

Total Estimated Cost of Action: \$8,000,000

- II. Construction and implementation of the remedial action which will consist of excavation of source area contamination and a soil vapor extraction system.

Total Estimated Cost of Action: \$1,500,000

Attachment I to Appendix B
Payment Schedule Table
Superfund State Contract
Rockaway Borough Wellfield Superfund Site

Estimated Contract Costs	State Superfund Contract Task I Groundwater Extraction (OU2)	State Superfund Contract Task II Excavation and Soil Vapor Extraction (OU4)
Total Construction Cost	\$8,000,000.00	\$1,500,000.00
State Share (10%) ¹	\$800,000.00	\$150,000.00
Federal Share (90%)	\$7,200,000.00	\$1,350,000.00
Payment Events		
Commitment of Funds for Construction (1%)	\$80,000.00 (\$60,000.00 PAID)	\$15,000.00
Award of Construction Contract (4%)	\$320,000.00 (\$240,000.00 PAID)	\$60,000.00
"Letter of Acceptance" of Construction Contract (4%)	\$320,000.00	\$60,000.00
Final Payment or Reimbursement ¹		

Date Updated: September 10, 2008.

¹ This table shows the schedule for making estimated payments in accordance with Paragraph E.3. to the Contract. The balance of the State's 10% cost share (be it a final payment by or reimbursement to) is addressed in Paragraph E.3.c.